

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
LAFAYETTE DIVISION

2007 APR 30 AM 11:24

U.S. DISTRICT COURT CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

DIANE OEHMEN and STEVE OEHMEN,)
On Behalf of Themselves and)
All Others Similarly Situated,)

Plaintiffs,)

vs.)

LAURNSAM, INC. D/B/A TLC SUPPORTED)
LIVING SERVICES, INC. and RESCARE, INC.)
D/B/A NORMAL LIFE OF INDIANA,)

Defendants.)

CAUSE NO **4:07CV0026AS**

CLASS ACTION

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Come now the Plaintiffs, Diane Oehmen and Steve Oehmen (hereinafter collectively "Plaintiffs"), and file a Complaint for Damages and Demand for Jury Trial against the Defendants, Laurnsam, Inc. d/b/a TLC Supported Living Services, Inc. and ResCare, Inc. d/b/a Normal Life of Indiana (hereinafter collectively "Defendants"). In support of this Complaint, Plaintiffs state as follows:

I. STATEMENT OF CASE

1. Plaintiffs bring this action against Defendants for unpaid overtime pursuant to the Fair Labor Standards Act (hereinafter "FLSA"), 29 U.S.C. § 207(o) and 213, unpaid wages under Indiana Code §§ 22-2-5-2, 22-2-2-4, 34-4-30, 22-2-9-2 and for conversion, breach of implied contract and unjust enrichment under Indiana common law. Plaintiffs' consents are attached hereto.

II. FACTUAL ALLEGATIONS

2. Defendants each conducted business in various locations in the State of Indiana at all times relevant to this action.

3. Plaintiff Diane Oehmen began employment as Direct Care Staff with Defendant Laurnsam, Inc. d/b/a TLC Supported Living Inc. (hereinafter "Defendant TLC") in 2002. For part of this time, Plaintiff Diane Oehmen worked at a residential facility in Lafayette, Indiana.

4. Plaintiff Steve Oehmen began employment as Direct Care Staff with Defendant TLC in 2003. Plaintiff Steve Oehmen has worked at residential facilities in Lafayette, Indiana throughout his employment with Defendants.

5. In August of 2006, Defendant ResCare purchased Defendant TLC's Indiana operations. Plaintiff Steve Oehmen still works for Defendant ResCare. Plaintiff Diane Oehmen's employment ended in 2006.

6. For all of their employment, Plaintiffs worked as Direct Care Staff in residential facilities and group homes, owned and managed by Defendant TLC, for individuals with physical and mental handicaps.

7. Plaintiffs' job duties as a Direct Care Staff had an emphasis on supervision and training for the individuals in their care, among other duties. The Direct Care Staff job duties were the same for all of the Direct Care Staff Defendants employed in Indiana.

8. Defendant did not pay Plaintiff Diane Oehmen for time she spent sleeping each night she was on call and at work on a 24/7 shift.

9. Up until late 2006, Defendants only paid a regular hourly pay rate and did not pay Plaintiffs and other Direct Care Staff wages at time and a half their regular pay rate for all hours they worked over 40 per week.

10. Plaintiffs filed a complaint with the Indiana Department of Labor prior to filing this Complaint.

11. Defendants' intentional, knowing and willful violation of Indiana and federal law caused Plaintiffs to suffer economic damages.

III. CLASS ACTION ALLEGATIONS

12. Class Definition: Plaintiffs bring this action on behalf of themselves and a class that includes all Direct Care Staff currently and previously employed by the Defendants working throughout the state of Indiana.

13. Class Too Numerous for Joinder: Defendants employ, and have employed, hundreds of Direct Care Staff throughout the state of Indiana. These employees are not exempt from the federal and state overtime laws, yet Defendant does not pay them in accordance with the FLSA and Indiana state laws.

14. Common Questions of Fact: Up until sometime in 2006, the Defendants did not pay employees time and half for hours worked over 40 in one week, which raises questions of fact common to the class.

15. Common Questions of Law: The same question of law is presented for all class members: Does Defendants' policy and practice violate the FLSA and the Indiana state law?

16. Typicality of Plaintiffs' Claims: The Plaintiffs' claims encompass the challenged policy and practice of Defendants described above.

17. Protection of Class Interests: Plaintiffs will fairly and adequately protect the interests of the class and does not have any conflict of interest with same.

18. Action Maintainable as a Class Action: This action is maintainable as an "opt-in" collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b), for FLSA claims and as a conventional class action for state law claims under Fed.R.Civ.P. 23(a) and (b) (1), (2) and (3).

19. The prosecution of separate actions by or against individual members of the class would create a risk of:

Inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the parties opposing the class (Fed.R.Civ.P. 23 (b) (1) (A)); and,

Adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests (Fed.R.Civ.P. 23 (b) (1) (B)).

20. Defendants have acted and refused to act on grounds generally applicable to class members, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to class members as a whole (Fed.R.Civ.P. 23 (b) (2)).

21. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

22. Class members have little or no interest in individually controlling the prosecution of separate actions.

23. This action is manageable as a collective action for FLSA claims and as a class action for Indiana state law claims because compared with any other method, such as individual interventions or the consolidation of individual actions, a class action is more fair and efficient.

IV. LEGAL THEORIES

COUNT I: UNPAID WAGES

24. Plaintiffs hereby incorporate by reference paragraphs 1 through 23 of Plaintiffs' Complaint.

25. Pursuant to Indiana Code § 22-2-5, et seq. and § 22-2-9-2, the wages, benefits, and costs and expenses owed Plaintiffs by Defendants as its employees are all "wages" within the meaning of the statute, which are to be made at regular intervals according to a predetermined schedule, independent of any other factor of employment.

COUNT II: CONVERSION

26. Plaintiffs hereby incorporate by reference paragraphs 1 through 25 of Plaintiffs' Complaint.

27. Pursuant to Indiana Code § 34-4-30 et seq., Indiana's civil conversion statute, the amounts Defendants owe Plaintiffs are not just a simple debt, but constitute a specific chattel, determined by the precise amounts agreed to by Plaintiffs and Defendants for wages. As such, the deliberate and intentional non-payment of wages to Plaintiffs by Defendants constitutes a wrongful taking of money.

28. Pursuant to the parties' agreement on wages, Defendants were obligated to pay Plaintiffs wages for their work. By their course of dealing, Defendants knew that Plaintiffs continued to work in exchange for payment of the agreed upon wages.

29. Because the civil conversion statute applies to the amounts Defendants owe Plaintiffs, Plaintiffs are entitled to an award under the civil conversion statute not to exceed three times actual losses, the costs of this action and a reasonable attorney's fee.

**COUNT III:
EQUITY/UNJUST ENRICHMENT**

30. Plaintiffs hereby incorporate by reference paragraphs 1 through 29 of Plaintiffs' Complaint.

31. Defendants received the benefit of Plaintiffs' work and on-call "sleep time" status, without compensating the Plaintiffs. As a matter of equity, Defendants should not be allowed to prosper at Plaintiffs' expense.

32. The money Defendants owe Plaintiffs as wages, all inured directly to Defendants' benefit by its nonpayment to Plaintiffs for their work. Plaintiffs should receive compensation to which they are entitled in equity and Defendants should not be unjustly enriched by nonpayment of wages to Plaintiffs.

**COUNT IV:
FAIR LABOR STANDARDS ACT**

33. Plaintiffs hereby incorporate paragraphs 1 through 32 of Plaintiffs' Complaint.

34. Defendants failed to pay Plaintiffs overtime wages at a rate of one and one half times her regular pay rate, for hours worked in excess of forty (40) hours per week.

35. Plaintiffs were not supervisors or bona fide administrators, live in caregivers or companions, members of management, or otherwise exempt employees as defined by the FLSA and relevant regulations.

36. Defendants' actions were intentional, willful, malicious and in reckless disregard of Plaintiffs' rights.

**COUNT V:
BREACH OF IMPLIED CONTRACT**

37. Plaintiffs hereby incorporate paragraphs 1 through 36 of Plaintiffs' Complaint.

38. Defendants entered into an implied contract with Plaintiffs to pay them wages for all work done and time spent for Defendants' benefit.

39. Defendants breached this implied contract by failing to pay Plaintiffs all the wages due for the benefit of the work given to Defendants.

40. Plaintiffs were/are at will employees. A contract for payment of wages existed by the very nature of the employer/employee relationship.

41. Plaintiffs were injured by Defendants' breach of implied contract to pay wages.

42. Defendants' actions were intentional, willful, malicious, and in reckless disregard for the rights of the Plaintiffs.

V. REQUESTED RELIEF

WHEREFORE, the Plaintiffs respectfully requests that the Court enter judgment in their favor and in favor of other similarly situated Direct Care Staff and award them the following relief:

- a. All wages and other economic benefits lost as a result of the Defendants' unlawful acts;
- b. All costs and attorney fees incurred in litigating this action;
- c. Treble damages for failure to pay wages under Indiana law;
- d. Liquidated damages pursuant to the FLSA;
- e. Compensatory damages;
- f. Pre- and post-judgment interest;
- g. Class representative fee; and,

h. Any and all other legal and/or equitable relief to which Plaintiffs are entitled.

DEMAND FOR TRIAL BY JURY

Plaintiffs, Diane Oehmen and Steve Oehmen, by counsel, request a trial by jury on all issues deemed so triable.

Respectfully submitted:

s/ Amy Ficklin DeBrot

Amy Ficklin DeBrot (#17294-49)

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Defendants.)

CAUSE NO.

CLASS ACTION

CONSENT OF PLAINTIFF

By my signature below: (1) I represent to the Court that I am an individual who is/was employed as a Direct Care Staff employee by one of both of the above listed Defendants in the State of Indiana; and, (2) I hereby authorize the filing and prosecution of this Fair Labor Standards and Indiana state law action in my name and on behalf of other similarly situated individuals.

Diane M Oehmen
Signed

Diane M Oehmen
Printed Name

3317 Coventry lane
Street Address

Lafayette In 47909
City, State, Zip

Dated: 4/26/07

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Steve P. Oehmen
Signed

Steve Oehmen
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